FILED

001264 JAN 29 2001

OFFICE OF THE CLERK

No. —

IN THE

Supreme Court of the United States

GREGORY E. WEST,

Petitioner,

vs.

JOHNNIE MOORE, and
AT & T TECHNICAL SERVICES, INC.,

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

SUPPLEMENTAL APPENDIX

GREGORY E. WEST
PETITIONER PRO SE
3632 13th Street, N.W.
Washington, D.C. 20010
(202) 265-0067

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

[Filed Dec. 9, 1999]

Civil Action No. 99-742-A

GREGORY E. WEST,

Plaintiff,

v.

AT & T TECHNICAL SERVICES, INC.,

Defendant.

ORDER

This matter comes before the Court on the Defendant AT&T Technical Service's Motion for Summary Judgment. The Court has considered the Motion and the parties' responses in regard to the Defendant's Motion for Summary Judgment and the Court finds that the Motion for Summary Judgment should be GRANTED and further argument would be of no benefit to the Court. It is hereby

ORDERED that case be removed from the December 20, 1999 trial docket and a Memorandum and Order reflecting the Court's ruling will follow.

/s/ Claude M. Hitton
CHIEF UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
December 9, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Civil Action No. 99-742-A

GREGORY E. WEST,

Plaintiff,

v.

AT&T TECHNICAL SERVICES, INC.,

Defendant.

MEMORANDUM OPINION

This matter comes before the Court on the Defendant AT&T Technical Service's Motion for Summary Judgment.

Plaintiff filed this Complaint against AT&T Technical Services, Inc. ("AT&T") and Johnnie Moore seeking damages under Title VII of the Civil Rights Act, 42 U.S.C. §2000e *et seq.*, for incidents arising out of his employment with AT&T. This Court dismissed Defendant Johnnie Moore from this case and dismissed the Plaintiff's retaliatory discharge claim against AT&T. The only remaining claims are claims of race and sex discrimination and retaliation. AT&T now moves for Summary Judgment in this case on the grounds that there are no material facts in dispute, that the Plaintiff has no evidence to prove that the promotions made by AT&T were made on the basis of the Plaintiff's race or gender and that the Plaintiff has put forth no evidence that AT&T retaliated against him after he filed a complaint of discrimination. Plaintiff alleges that AT&T discriminated against him on the basis of his race and gender when it selected a white female, Wendy O'Toole, to succeed Joe

Puglisi as the switch database technician for the Centralized Telephone Assignment Process. Plaintiff also alleges that AT&T retaliated against him by assigning him to the STRIP program, eliminating his position on the OMNIS contract and refusing to give him the use of a company car. Plaintiff alleges that these retaliatory actions constitute race and/or gender discrimination. AT&T denies these allegations and asserts that Ms. O'Toole was chosen for the position in question because she was better qualified than the Plaintiff. AT&T now moves for Summary Judgment in this case.

Summary Judgment is appropriate under Rule 56 (c) when there can be "no genuine issues as to any material fact." Only material facts, those facts relating to the elements of the claim made, are at issue in considering Summary Judgment since "a complete failure of proof concerning an essential element of a party's case necessarily renders all other facts immaterial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986).

It is well-established in the Fourth Circuit that to survive a Motion for Summary Judgment the non-moving party must produce "specific facts showing that there is a genuine issue for trial rather than resting upon the bald assertions of his pleadings." *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985).

To prove a Title VII case in this jurisdiction, a Plaintiff must prove that: (1) he is a member of the protected class; (2) he applied for the position in question: (3) he was qualified for the position; and (4) he was rejected for the position under circumstances giving rise to an inference of unlawful discrimination. *See Evans v. Technologies Applications & Service Company*, 80 F.3d 954, 959-60 (4th Cir. 1996); *Amirmokri v. Baltimore Gas & Electric Company*, 60 F.3d 1126, 1129 (4th Cir. 1995); *Holmes v. Bevitacqua*, 794 F.2d 142,-147 (4th Cir

In this case, there are no material facts in dispute regarding the fourth element that the Plaintiff must prove to establish his *prima facie* case. The Plaintiff presents facts in dispute in his response and reply. However, the facts he presents in rebuttal to the Motion for Summary Judgment are not material facts. They do not provide any evidence to the Court that AT&T's promotion of Ms. Wendy O'Toole was because of her race and gender. Evidence was provided that, in fact, Ms. O'Toole had significantly more experience with switch database programs. It is also true that Ms. O'Toole served as Mr. Joe Puglisi's back-up before replacing him at the position in question. There is no evidence presented by the Plaintiff that proves he was not chosen for the promotion due to his race or gender. Plaintiff makes those bare allegations based solely on his opinion that race and gender were motivating factors. It is clearly established that mere allegations alone are not sufficient to make out a *prima facie* case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Carroll v. United Steelworkers of America*, 498 F. Supp. 976, 978 (D. Md. 1980), *aff'd*, 639 F.2d 778 (4th Cir. 1980). As the Plaintiff has failed to make out his *prima facie* case under Title VII, the Motion for Summary Judgment should be granted and this case should be dismissed.

Plaintiff's claim of retaliation also fails. Under Title VII, the Plaintiff carries the burden of proving intentional discrimination and retaliation on the part of the employer because the Plaintiff is a member of a protected class. *See St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993). The Supreme Court established a process to determine if the employer intentionally discriminated against an employee: (1) the Plaintiff has the burden to prove by a preponderance of the evidence that a *prima facie* case of discrimination and retaliation exists; (2) the burden shifts to the Defendant to rebut the presumption established by the Plaintiff by articulating a legitimate, non-discriminatory and non-retaliatory reason for its actions; and (3) if the Defendant

employer rebuts the presumption of discrimination by the Plaintiff, the Plaintiff must prove that the employer intentionally retaliated or discriminated against him. *See Gillins v. Berkeley Electric Cooperative.*, 148 F.3d 413, 416-17 (4th Cir. 1998). As discussed above, the Plaintiff in this case cannot establish a *prima facie* case of race or gender discrimination and therefore this claim fails.

An appropriate Order shall issue.

/s/ Claude M Hilton
CLAUDE M. HILTON
CHIEF UNITED STATES
DISTRICT JUDGE

Alexandria, Virginia
December 15, 1999

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[FILED October 31, 2000]

No. 00-1237
CA-99-742

GREGORY E. WEST
Plaintiff - Appellant

v.

AMERICAN TELEPHONE & TELEGRAPH
TECHNICAL SERVICES, INCORPORATED
Defendant - Appellee

and

JOHNNIE MOORE
Defendant

On Petition for Rehearing En Banc

The appellant's petition for rehearing en bane was submitted to this Court. As no member of this Court requested a poll on the petition for rehearing en banc,

IT IS ORDERED that the petition for rehearing en banc is denied.

For the Court

/s/ Patricia S. Connor
PATRICIA S. CONNOR
CLERK